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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,493	04/15/2004	Todd Fries	1735.ALA100-FOR	8565
26308 7590 06/26/2007 RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			EXAMINER MCLELLAND, KIMBERLY KEIL	
			ART UNIT 1734	PAPER NUMBER
			MAIL DATE 06/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/825,493	FRIES ET AL.	
	Examiner	Art Unit	
	Kimberly K. McClelland	1734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 7-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/29/07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Double Patenting***

1. The double patenting rejections of claims 1-6 over Application No. 11/527/293 is maintained. Applicant's preference to hold the rejection in abeyance is acknowledged. The rejection is maintained until appropriate action is taken.

### ***Specification***

2. Applicant's amendment to the specification filed 3/29/07 has been entered.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by PCT International Publication No. WO88/01247 to Aguero.
5. With respect to claim 1, Aguero discloses a cable marking apparatus, including a label roller assembly for supplying labels to said apparatus (column 4, lines 9-11); a rotatable puck mechanism (38), said puck mechanism having an interrupted circumferential surface defining an opening (39), said opening adapted to receive a predetermined elongate article (50); means for rotating said puck mechanism (page 1, line 18); means for transporting at least one of said labels toward said opening of said

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puck mechanism (36); and means for transporting said peripheral surface of said elongate article toward said opening of said puck member (59; See Figures 1 and 10).

6. As to claim 2, Aguero discloses the means for transporting said peripheral surface of said elongate object comprises a gripping mechanism (59), said gripping mechanism arranged to receive one of said elongate articles (50) and guide said of one said elongate articles toward said opening (39) in said rotatable puck mechanism (38); and further including means for driving said gripping mechanism (62; See Figures 1 and 10).

7. As to claim 3, Aguero discloses at least one label sensor device (page 5, line 36- page 6, line 5).

8. As to claim 4, Aguero discloses a label roller assembly for supplying labels to said apparatus (column 4, lines 9-11); at least one gripper element for grasping and moving said elongate article (59); means for driving said gripper element (62); a rotatable puck mechanism(38), said puck mechanism having an interrupted circumferential surface defining an opening (39) for receiving said elongate object (50); and means for rotating said puck mechanism (page 1, line 18; See Figures 1 and 10).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT International Publication No. WO88/01247 to Aguero in view of U.S. Patent No. 6,350,070 to Tasma.

11. With respect to claim 5, Aguero discloses a cable marking apparatus, including a label roller assembly for supplying said labels and adhered backing strip to said apparatus (column 4, lines 9-11); label guide means for moving said labels through said apparatus (36); a label stripping assembly for removing said labels from said backing strip (31); a puck assembly (38), said puck assembly including a puck member having an interrupted circumferential surface defining an opening (39); and a gripper assembly (59) for grasping and moving an elongate object (50) relative to said opening (39). However, Aguero does not disclose and a take up roll for receiving said backing strip.

12. Tasma discloses a label applicator, including a take up roll for receiving said backing strip (column 3, lines 41-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the take-up spool taught by Tasma for the cutting edge of the cable marking apparatus disclosed by Aguero. The motivation would have been to ease the disposal of the waste backing.

13. As to claim 6, Aguero disclose a spring loaded (51) entrance door (40; See Figures 1 and 3).

### ***Response to Arguments***

14. Applicant's arguments filed 3/29/07 have been fully considered but they are not persuasive.

Applicant's arguments are against the primary reference, Aguero, are based on the lack of disclosure of a means for transporting said peripheral surface of said elongate article toward said opening of said puck member. Aguero discloses the cable engaging members (59) is slidably mounted to the sliding mounting block (56) which grips the cable and moves toward fixed mounting block (55) by means of springs (62). This movement which grips the cable (50) as the sliding mounting block (56) is positioned to form the drum halves (Figures 5-10) meets applicant's claimed invention of means for transporting said peripheral surface of said elongate article towards the opening of said puck mechanism.

15. In response to applicant's argument that Aguero does not disclose at least one gripper for grasping and moving said elongate article, examiner disagrees. Aguero discloses cable engaging members (59) which are slidably mounted on sliding mounting block (56) which is brought into engagement with fixed mounting block (55) by spring means (62). This movement which grips the cable (50) as the sliding mounting block (56) is positioned to form the drum halves (Figures 5-10) meets applicant's claimed invention of at least one gripper for grasping and moving said elongate article.

16. Consequently, the rejections of claims 1-4 under 35 U.S.C. 102 (b) and claims 5-6 under 35 U.S.C. 103(a) have been maintained.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly K. McClelland whose telephone number is (571) 272-2372. The examiner can normally be reached on 8:00 a.m.-5 p.m. Mon-Fri..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip C. Tucker can be reached on (571)272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Kim McClelland*

KKM

  
PHILIP TUCKER  
PRIMARY EXAMINER  
S.P.E., ART UNIT 1734